

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of the Revocation of )  
Eligible Telecommunications Carrier Designation ) File No. RC-2016-0278  
of Total Call Mobile, Inc. )

## TOTAL CALL MOBILE'S RESPONSE TO STAFF RECOMMENDATION

**COMES NOW** Total Call Mobile (“Total Call Mobile” or “Company”), by its attorneys, and responds to the Missouri Public Service Commission’s (“Commission”) Amended Order Granting Additional Time and Directing Filing (“Order”)<sup>1</sup> as follows:

## INTRODUCTION

Total Call Mobile respectfully requests a formal hearing before the Commission to address the issues raised in the Commission Staff’s Report and Response to Total Call Mobile’s Answer<sup>2</sup> (“Report”). First, the Report bases much of its allegations on the pending Notice of Apparently Liability (“NAL”)<sup>3</sup> brought by the Federal Communications Commission (“FCC”). The Company contests the NAL and has provided a detailed response to the FCC explaining why no penalty should be imposed. This Commission should not rely on the FCC’s allegations, but must, to the extent the allegations are to be considered, engage in a full examination of the evidence. Second, the Report draws sweeping conclusions that exceed the facts cited, many of which are challenged by Total Call Mobile. Third, Total Call Mobile has

<sup>1</sup> *In the Matter of the Revocation of the Eligible Telecommunications Carrier Designation of Total Call Mobile, Inc.*, Amended Order Granting Additional Time and Directing Filing, File No RC-2016-0278 (Sept. 19, 2016) (“Order”).

<sup>2</sup> *In the Matter of the Revocation of the Eligible Telecommunications Carrier Designation of Total Call Mobile, Inc.*, Staff Report and Response to Total Call Mobile’s Answer, File No. RC-2016-0278 (Sept. 12, 2016) (“Report”).

<sup>3</sup> *In the Matter of Total Call Mobile, Inc.* File No. EB-IHD-14-00017650, Notice of Apparent Liability for Forfeiture and Order, FCC 16-44 (rel. Apr. 7, 2016) (“NAL”).

policies and procedures in place designed to comply with Lifeline program rules. The Company continues to improve and update these processes based on its experiences and the changing marketplace. For these three reasons, the Commission should grant the Company an opportunity to present its case at a formal hearing before making any decision regarding Total Call Mobile's ETC designation. This response discusses each of these reasons below.

## **I. COMMISSION STAFF'S RECOMMENDATION TO REVOKE ETC DESIGNATION IS PREMATURE AND PREJUDICIAL**

As Total Call Mobile discussed in its Answer to Staff Motion and Response to Order to Show Cause ("Answer"), Commission revocation of Total Call Mobile's ETC designation would be premature and prejudicial.<sup>4</sup> The FCC NAL is merely a charging document, and the FCC is currently reviewing the Company's response to the NAL, as well a petition responding to a funding hold.<sup>5</sup> Because no substantive FCC decisions have been made at this time, revoking ETC designation unfairly harms the Company without the opportunity to respond and accurately present the facts.

## **II. A HEARING WILL ENABLE TOTAL CALL MOBILE TO ADDRESS STAFF'S INACCURATE UNDERSTANDING OF THE MATTER**

It is clear from the Report that staff rely on the FCC's NAL and have drawn conclusions that are either too broad or contradictory to the evidence provided. This is why a

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<sup>4</sup> *In the Matter of the Revocation of the Eligible Telecommunications Carrier Designation of Total Call Mobile, Inc.*, Answer to Staff Motion and Response to Order to Show Cause, File No. RC-2016-0278 (May 16, 2016) ("Answer").

<sup>5</sup> Total Call Mobile provided Commission staff with a courtesy copy of its response to the NAL on July 7, 2016. *See also Total Call Mobile Petition for Reconsideration of Unlawful Funding Hold*, WC Docket No. 11-42 (filed July 22, 2016); *In the Matter of Total Call Mobile, Inc., Order Directing Temporary Hold of Payments*, WC Docket No. 11-42 (rel. June 22, 2016).

hearing is so vital. A hearing will provide a fair and due process for the Company to respond to the specific allegations and clarify any confusion as well as better understand the actual rule violations alleged by staff. While this Response does not address every allegation in the Report, it offers some examples where the evidence was incorrectly interpreted, demonstrating why a hearing is necessary.

#### **A. The Company Submitted the Enrollment Forms in a Timely Manner**

First, the Report alleges that the Company is unable to provide Lifeline enrollment forms in a timely manner. Staff requested Lifeline enrollment forms on April 25, 2016. Within 28 days, the Company submitted enrollments forms for \*\*\_\_\_\_\*\* subscribers, substantially completing the request. Just twelve days later, it provided enrollment forms for \*\*\_\_\*\* subscribers. Three days later, Total Call Mobile provided \*\*\_\_\*\* other forms.

Next, footnote 18 in the Report states that Total Call Mobile “appears unprepared to respond to this basic request,” citing the FCC’s request for the Company’s enrollment forms.<sup>6</sup> Staff fail to acknowledge that the FCC requested enrollment forms for hundreds of thousands of subscribers nationwide, not for subscribers from one state. Any similarly-situated company would need the time to retrieve and submit such a vast number of multi-page documents.

Lastly, according to the Report, “TCM should be considered non-compliant with record-keeping requirements.”<sup>7</sup> The Report fails to cite the specific record-keeping requirements allegedly violated despite the Company’s effort to provide the requested forms in a timely manner, continuously supplementing its response. The Report’s allegation of providing enrollment forms in an untimely manner is just not accurate.

#### **B. Clerical Mistakes Happen; They Do Not Violate Rules**

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<sup>6</sup> Report, FN 18 at 6.

<sup>7</sup> Report at 6.

The Report also finds that the Company has a record keeping issue because its subscriber list contained just one duplicate subscriber. Staff dismisses Total Call Mobile's response that the duplicate listing is a clerical error and not an instance of duplicative support even though the Company reviewed its records to confirm that these subscribers did not receive duplicative support. No rules prohibit clerical errors. The existence of one error does not indicate a "record keeping problem."

### **C. Subscribers Complete and Sign Enrollment Forms.**

The Report bases its allegation that subscribers have minimal involvement in completing enrollment forms on conversations with "several subscribers"<sup>8</sup> (out of thousands) who claim not to remember completing the forms. With \*\* \_\_\_\_\_ \*\* subscribers remaining, conversations with "several subscribers" are not significant enough to conclude minimal involvement in completing the enrollment forms.

Staff also allege that agents sign customer signatures even though Company policy requires applicants to provide their own signature.<sup>9</sup> Signature may not consist of lines, dots, Xs, or symbols. The applicant's signature must match the signature on its ID. Thus, the staff's conclusion that subscribers do not sign the forms themselves is inaccurate.

### **D. The Company Takes Reasonable Efforts to Verify or Investigate Addresses.**

Staff also opine that Total Call Mobile "takes little responsibility for the need to further investigate or question any unusual situations involving multiple subscribers sharing an address."<sup>10</sup> Yet, as an example, to investigate an address in Data Request 13, Company staff called the Department of Social Services on August 26, 2016 and verbally confirmed that that

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<sup>8</sup> See id. at 5.

<sup>9</sup> Answer, Exhibit A: Lifeline Application Sign-Up Checklist at 6.

<sup>10</sup> Report at 9.

they permit homeless persons to use their address as a mailing address. Staff incorrectly conclude that Total Call Mobile is irresponsible in such situations without even citing a specific rule that the Company supposedly violated.

To further address the issue of multiple subscribers sharing the same address, Total Call Mobile notified subscribers listed in Data Requests 14, 15, and 16 that they had 30 days to provide proof of their current address, which the Company would verify through Google Street View. During this process, Total Call Mobile de-enrolled \*\*\_\_\*\* active subscribers on August 31, 2016. Lifeline rules do not require such verification processes, but Total Call Mobile took the extra step to check addresses and de-enroll those with incorrect addresses.

### **III. TOTAL CALL MOBILE MAINTAINS AND IMPROVES ITS POLICIES TO COMPLY WITH LIFELINE PROGRAM RULES**

Total Call Mobile continues to maintain policies and procedures designed specifically to comply with the Lifeline program rules.<sup>11</sup> For example, the Company often reviews and revises policies on correctly entering names, taking photographs of documents, and reviewing signatures. Another effort includes the development of a real-time review queue to review and audit the submitted enrollment applications for adherence to Company policy. The Company even created an Agent Compliance Office to oversee agents and address non-compliance, which sometimes led to agent de-activation for violation of Company policy. The Company not only continues to execute its own policies but to introduce improvements and stay current with the evolving Lifeline marketplace.

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<sup>11</sup> Total Call Mobile provided these policies and procedures in Attachment A to its Answer.

## CONCLUSION

In sum, Total Call Mobile request welcomes the opportunity for a due process hearing to defend against staff allegations and address any Commission concerns. The Commission should not draw conclusions based on a pending NAL which is still under FCC review or from staff's interpretation of information obtained during its investigation. The examples provided above validate the need for staff and the Commission at large to better understand the facts. Further, the Company has documented processes in place designed to comply with Lifeline rules. A hearing will give the Commission a more accurate picture of the Company's activities and efforts, which will show that the Company did in fact comply with Lifeline program rules and that it should not suffer the harm of revocation of its ETC designation.

Respectfully submitted,

/s/ Carl J. Lumley

By: \_\_\_\_\_

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*Counsel to Total Call Mobile, LLC*

Dated: September 30, 2016

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document was served upon the parties listed below on this 30th day of September, 2016, by either e-mail or U.S. Mail, postage prepaid.

/s/ Carl J. Lumley

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